

TAXATION: No authority for refunding proportionate part  
MANUFACTURERS: of manufacturers' tax for 1946.

October 30, 1947

FILED

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Mr. M. E. Morris, Director  
Department of Revenue  
Jefferson City, Missouri

Dear Sir:

This is in reply to your letter of recent date wherein you request an official opinion from this department on the following statement of facts:

"Would a taxpayer be entitled to a refund, or to a credit, of five-twelfths of his manufacturers' license tax paid in 1946 because of a general failure of collectors to recognize the apparent intent of a change in the law made by House Committee Substitute for House Bill No. 539, on the taxation of manufacturers?"

The law applicable to taxation of manufacturers is found in Laws of Missouri, 1945, pages 1855 to 1954. H.C.S.H.B. No. 539 of the 64th General Assembly, to which you refer in your letter, is found at page 1855 of said laws. This bill was approved November 30, 1945. Section 1 of this bill was amended by the 63rd General Assembly, and this section, as amended, is found in Laws of Missouri, 1945, at page 1954. However, the section as amended contains the same provisions in so far as your question is involved as it did in said H.C.S.H.B. No. 539. Section 1 of the act, Laws of Missouri, 1945, page 1954, provides in part as follows:

"All manufacturers in this state shall be licensed and taxed on all raw material and finished products, as well as all the tools, machinery and appliances used by them, in the same manner as is or may be provided by law for the taxing and licensing of merchants; and no county, city, town, township, or municipal authority thereof, shall ever levy any greater amount of tax against a manufacturer than

is levied against merchants for the same period. On the first Monday in May in each year it shall be the duty of each person, corporation or copartnership of persons, as provided by this article, to furnish to the assessor of the county, or township, in which such license may have been granted a statement of the greatest amount of raw material and finished products, as well as all the tools, machinery and appliances used by him or them, which he or they may have had on hand at any one time between the first Monday in January and the first Monday in April next preceding; said statement shall include raw material and finished products owned by such manufacturer, as well as all the tools, machinery and appliances used by him or them. \* \* \*

Section 3 of said H.C.S.H.B. No. 539, Laws of Missouri, 1945, at page 1858, provides in part as follows:

"Nothing in this act shall be so construed as to apply to manufacturers whose raw material, finished products, tools, machinery and appliances, in the aggregate amount, be less than one thousand dollars. Licenses issued under this act shall be for one year, ending on the thirty-first day of December of the then current year, except that licenses shall be issued to cover all or any part of the period beginning June 1, 1946 and ending December 31, 1946. \* \* \*

It will be noted that under this section the license and taxes imposed on the manufacturer are for one year ending on the 31st day of December of the year in which the tax is assessed.

Under the old law as it existed prior to this 1945 act (Section 11339, R. S. Mo. 1939), it provided that the license would be for one year ending on the first day of June of the then current year.

By the provisions of said Section 3, supra, the period of the license ends on December 31 instead of June 1 as was provided in said Section 11339. Therefore, it would seem that

the taxpayer who paid the manufacturers license for the year beginning June 1, 1945, was being deprived of the period of license from January 1, 1946, to June 1, 1946, and as is stated in the letter accompanying your request, there is a question as to whether or not the taxpayer is entitled to a refund of the license tax for five-twelfths of the license period.

Section 3 of Article X of the Constitution of Missouri, 1945, provides that "taxes shall be levied and collected by general laws and shall be payable during the fiscal or calendar year in which the property is assessed."

For the purpose of conforming to this provision of the Constitution, the laws applicable to taxation of merchants and manufacturers were changed so that the tax is assessed, levied and collected in the same year. Under the old law, they were assessed in one year, and levied and collected in the following year.

Since said Section 1 of the Manufacturers' Tax Act, Laws of Missouri, 1945, page 1954, provides that the manufacturers shall be licensed and taxed on raw materials in the same manner as merchants, we will refer to the act relating to licensing and taxing of merchants which is found at page 1838, Laws of Missouri, 1945. Section 11304 of this act requires the merchants to obtain a license to sell merchandise. Section 11305 of the act provides in part as follows:

"Merchants shall pay an ad valorem tax equal to that which is levied upon real estate, on the highest amount of all goods, wares and merchandise which they may have in their possession or under their control, whether owned by them or consigned to them for sale, at any time between the first Monday in January and the first Monday in April in each year; \* \* \* "

Under Section 11314 of said Merchants' Tax Act, Laws of Missouri, 1945, page 1843, it is provided that the collector shall charge the fee of fifty cents for issuing the license to the merchant or manufacturer.

In the case of State ex rel. vs. Tracy, 94 Mo. 217, the court, in discussing the nature of these two taxes, said, l.c. 224:

" \* \* \* The license, when issued, gives the merchant the right to engage in a mercantile pursuit; for that he pays a nominal sum, fifty cents to the clerk for issuing the license, and twenty-five cents to the collector for approving the bond. The tax which the merchant is required to pay is another and a different thing. It is perfectly clear, from the provisions of the statute in question, that the tax is one upon the stock in trade, not upon the occupation. If a tax upon the stock in trade, it must be a personal property tax. The law adopts the method of taking the largest amount on hand between given dates as the best means of arriving at the volume of the stock in trade. \* \* \* "

In the case of State ex rel. Lane vs. St. Louis-S. F. Ry. Co., 92 S.W. (2d) 644, the court, in discussing the nature of the tax imposed on merchants and manufacturers, said, l.c. 645:

" \* \* \* The property subject to this tax is assessed, on the basis of the highest valuation, between March and June of each year. The county board of equalization meets in September to make such adjustments as may be necessary with reference to the assessments of the merchants' and manufacturers' property. The assessment is made after the 1st of June. The assessed valuation thus completed becomes a valuation upon which to base the tax levy for the following year. \* \* \* "

According to the holdings in these two cases, the taxes imposed upon the merchant and manufacturer under the law are of two types, namely, the license tax for which he is charged fifty cents per year and the ad valorem tax which is the tax upon the value of the property which such merchant or manufacturer has at the certain period during the year in which the tax is collected. Also according to these cases, and if the law had not been changed in 1945, the valuation for the 1946 manufacturers' tax would have been the value of raw materials on and between the first Monday in March and the first Monday in June, 1945; but since the Constitution and laws have stepped up the levying and collecting of taxes so that all are done in the same year, then it was necessary for the lawmakers to enact legislation in accordance therewith, which has been done by the 1945 acts hereinbefore referred to.

These acts do not require the manufacturer or the merchant to pay a double ad valorem tax for the same period--they simply change the period for determining the valuation of an assessment and provide that the ad valorem tax be collected in the same year of the assessment and levy. Therefore, the fact that the license year is changed from the fiscal year ending on the first day of June to the calendar year which ends on the 31st day of December does not cause the taxpayer to pay anymore ad valorem tax. The only amount which the taxpayer might be deprived of would be five-twelfths of the fifty cents license fee which he paid for the period beginning June 1, 1945, and ending June 1, 1946. Since this is such a small amount, however, we do not deem it necessary to go into the question of whether or not a refund for this amount could be made. From the question submitted, we are assuming that a refund of the ad valorem tax is the tax to which you refer.

Then we finally come to the question of authority of the county court to refund a portion of the ad valorem tax which has been imposed on the manufacturers for the year 1946. Even if it were found that the manufacturer, when he paid his 1945 tax, did pay the tax up until June 1, 1946, and then the lawmakers by the 1945 act taxed him again, still, unless the lawmakers have made provision for the county court to refund a tax which has been illegally or erroneously collected or doubly imposed, such court would have no authority to make a refund of such taxes. In the case of State ex rel. School District vs. Jackson, 84 S.W. (2d) 988, in discussing the jurisdiction of county courts, the court said:

" \* \* \* Such court is a creature of the Constitution, and its powers are limited by the terms of the various statutes defining its powers. It has no common-law or equitable jurisdiction."

The only statute which we find that applies to refund of taxes by county courts is Section 11215, R. S. Mo. 1939, which provides in part as follows:

"Wherever, in any county in this state, money has been collected under an illegal levy, the county court of such county or counties is hereby authorized to refund the same by issuing warrants upon the fund to which said money had been credited, in favor of the person or persons who paid the same as shown by the collector's books:

Provided, that should the person in favor of whom any warrant or warrants are issued be dead or unable to appear in person, then the same shall be paid to his heirs or legal representatives; Provided further, that said county court or courts may, in their discretion, refund, in addition to the money collected, interest which may have accrued upon the same, not to exceed six per cent; Provided further, that before any levy shall be considered illegal, it shall have been so declared by the supreme court of the state of Missouri; Provided further, that the provisions of this section shall only apply to those counties in which the money collected under said illegal levy is either in the county treasury or within the control of the county court: \* \* \* "

Even conceding that the tax in question has been illegally and erroneously collected, still under the foregoing section the county court could not refund these taxes if they were not in the county treasury or within the control of the county court. Under Section 11219, R. S. Mo. 1939, the county treasurer when the revenues come into his hands is required to separate and divide the revenues and set them off to the subdivisions to which they are entitled. This would include the taxes for county revenue purposes, special road district purposes, school districts and any other political subdivision which is authorized to receive tax moneys. For the purpose of this opinion, we are assuming that the 1946 manufacturers' taxes have been collected and distributed, and are no longer in the county treasury or within the control of the county court.

#### CONCLUSION

From the foregoing, it is the opinion of this department that a taxpayer would not be entitled to a refund or a credit of five-twelfths of his manufacturers' license tax paid in 1945.

Respectfully submitted,

APPROVED:

TYRE W. BURTON  
Assistant Attorney General

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J. E. TAYLOR  
Attorney General

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